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IN THE

Supreme Court of the United States

October Term, 1967

No. 1190

FRANKLIN S. KINCHELOE, JR., M.D.,
Petitioner,

v.

BOARD OF MEDICAL EXAMINERS OF THE
STATE OF NORTH CAROLINA,
Respondent.

ANSWER TO BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

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Counsel for Petitioner

Supreme Court of the United States

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The Court should set aside the decision to revoke petitioner's license because the hearing upon which such decision was based was not conducted in accordance with Par. 90.14 of the General Statutes. The Board permitted each member of the Board and their attorney to question petitioner, who

was then in the hands of seven prosecutors besides the Board's attorney, with no one present to see that he had a fair and impartial hearing.

Paragraph 90-14.6 of the General Statutes provides

> "*Evidence admissible.* – In proceedings held pursuant to this article the Board shall admit and hear evidence in the same manner and form as prescribed by law for civil actions."

The procedure followed, as mentioned above, was contrary to Rule 4 of the Rules of Practice in the Superior Court which required that the cross-examination of each witness be conducted by one counsel. The interrogation of Dr. Kincheloe by the several members of the Board and the Board's counsel was detrimental to petitioner, prejudiced his case, was unlawful and precluded by Par. 90-14.6 of the General Statutes. This was certainly not in accordance with the same manner and form prescribed by law in civil actions as required by #90-14.6 of the General Statutes of North Carolina.

The foregoing provisions of the Statute and Rules of Practice were not followed here, which shows the illegality of the hearing and justifies granting this petition for certiorari.

Petitioner withdraws the last five paragraphs of page 10 of the Petition for a Writ of Certiorari and the first paragraph on page 11 of its petition and substitutes the following therefor:

The petitioner concurs with conclusions of law (R. 34-35) numbered 8 by Judge Thornberg which is as follows:

> 8. "That a review of the record pursuant to the provisions of GS 90-14.10 leads the undersigned court to the inescapable (R. 34) conclusion, however;
>
> A. (R. 35) That Dr. Kincheloe did not receive a fair and impartial hearing by the Board.

B. That incompetent evidence outside the scope of his notice of charges and accusations was heard and most probably considered by the Board in reaching its decision.

C. That the Board at its hearing on this matter did not comply with the mandatory provisions of GS 90-14.6."

Respectfully submitted,

WARREN E. MILLER
810 - 18th Street, N.W.
Washington, D.C. 20006
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a copy of the foregoing Answer, postage prepaid, to J. H. Anderson, Attorney for the Board of Medical Examiners for the State of North Carolina, 806 Wachovia Bank Building, Raleigh, North Carolina, this 18th day of April, 1968.

WARREN E. MILLER